IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.15853 of 2005

Date of Decision: 9.1.2007

Bhura Singh .....Petitioner

Versus

State of Punjab and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE J. S. KHEHAR
HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.AK Walia, Advocate for
Mr.SK Sharma, Advocate
for the petitioner.

Mr.BS Chahal, AAG Punjab for the respondents.

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J.S.KHEHAR, J.(Oral)

The petitioner was issued a charge sheet dated 3.3.2003 under Rules 8 and 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as the Punishment Rules). After a regular departmental enquiry was conducted against the petitioner, the Enquiry Officer submitted a report dated 18.11.2003.

A perusal of the aforesaid enquiry report reveals that the Enquiry Officer returned a finding on the issue of sanctioning a fake Intkal at the hands of the petitioner. However, on the charge pertaining to the petitioner of having accepted a bribe of Rs.8,000/-, the Enquiry Officer arrived at the conclusion that there was insufficient evidence to record a definite finding in that behalf.

Consequent upon the issuance of a show cause notice dated 19.12.2003, the Punishing Authority, by an order dated 27.2.2004, imposed a punishment of removal from service on the petitioner. A perusal of the punishment order reveals that the Punishing Authority inflicted the aforestated punishment on the petitioner by assuming that both the charges levelled against him had been proved during the course of the departmental enquiry.

Dissatisfied with the punishment order dated 27.2.2004, the petitioner preferred an appeal, which was accepted by the Commissioner, Patiala Division, Patiala, by an order dated 3.1.2005. Consequent upon the acceptance of the appeal preferred by the petitioner, the petitioner was re-instated into service.

A review petition was filed at the hands of the Collector, Sangrur District before the Commissioner, Patiala Division, Patiala, under Rule 21 of the Punishment Rules. While disposing of the review petition, the Commissioner, Patiala Division, Patiala passed an order dated 5.9.2005 (Annexure P15) whereby the earlier order passed by his predecessor dated 3.1.2005 was set aside. Through the instant writ petition, the petitioner has impugned the order dated 5.9.2005 (Annexure P15).

We have perused the order passed by the Commissioner, Patiala Division, Patiala dated 5.9.2005, in exercise of the power of review vested in him, under Rule 21 of the Punishment Rules. A perusal of the aforesaid order reveals that while reviewing the order passed by her predecessor on 3.1.2005, the Commissioner, Patiala Division, Patiala proceeded to decide the issue in hand by assuming that the petitioner had been found guilty on both the charges levelled against him. As already noticed hereinabove, in

the enquiry report dated 18.11.2003, the petitioner was exonerated from the charge of having accepted illegal gratification. For the aforesaid reasons itself, we are satisfied that the impugned order dated 5.9.2005 which is based on foundationally incorrect facts, deserves to be set aside. The same is accordingly set aside. The reviewing authority shall again re-determine the matter in accordance with law.

The instant writ petition stands allowed in the aforesaid terms.

(J. S. KHEHAR)
JUDGE

(S. D. ANAND)
JUDGE

January 9, 2007
SRM